

# Exhibit D

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI  
AT LIBERTY

MICHAEL AND SHELLIE GILMOR,

Plaintiffs,

v.

PREFERRED CREDIT CORPORATION,

Defendants

Case No. CV100-4263-CC

Division 2

**NOTICE OF CLASS ACTION LAWSUIT**

**This Notice May Affect Your Rights  
Please Read it Carefully and Completely**

**TO: All persons who, on or after June 27, 1994, obtained a second mortgage loan, secured by Missouri residential real estate, from Preferred Credit Corporation (formerly, T.A.R. Preferred Mortgage Corporation) and who were charged a "loan origination" fee of more than 2% or 5% of the total loan amount, depending on the date, and/or other fees or closing costs allegedly prohibited by the Missouri Second Mortgage Loans Act, § 408.233 RSMo..**

**NOTICE**

A class action lawsuit was commenced on June 27, 2000 in the Circuit Court of Clay County, Missouri, styled *Michael and Shellie Gilmor, et al., v. Preferred Credit Corporation, et al.*, Case No. CV100-4263 CC. The Plaintiffs filed this action on their behalf and on behalf of a class of persons who obtained second mortgage loans from Preferred Credit Corporation (which also used the named T.A.R. Preferred Mortgage Corporation). The Plaintiffs allege that Preferred Credit violated the Missouri Second Mortgage Loans Act, R.S. Mo. § 408.233, by charging "loan origination" fees and closing costs that Preferred Credit could not lawfully charge or receive from its borrowers.

The Plaintiffs are seeking to recover varying types of monetary relief from Preferred Credit and all of the other entities that purchased and held the second mortgage loans of the Class, including a refund of any unlawful costs and fees, the reimbursement of any interest paid on the loans, a forfeiture of any interest still owed, reasonable attorneys' fees, and an award of punitive damages.

Besides Preferred Credit, the following entities are also currently named as defendants in this case: U.S. Bank National Association ND, IMPAC Funding Corporation, IMPAC Mortgage Holding, Inc., IMPAC Secured Assets Corp., IMPAC Secured Assets CMN Trust Series 1998-1,

Bankers Trust Company of California, and Bankers Trust Company. The Defendants deny that they violated the law or that the Plaintiffs are entitled to any relief.

### **WHY ARE YOU RECEIVING THIS NOTICE?**

This Notice is being sent to you in the belief that you may be a member of the Class whose rights may be affected by this lawsuit. It should not be considered as an opinion by the Court concerning the merits of this lawsuit. This Notice is intended merely to advise you that this class action lawsuit is pending and to inform you of your rights and options as a member of the Class.

**Do not be alarmed. You have not been sued. This Notice is merely to tell you about this Class Action lawsuit, to alert you to the fact that you have been identified as a member of the Plaintiff Class, and to inform you of your rights and options as a member of the Class.**

### **DEFINITION OF THE PLAINTIFF CLASS**

On January 3, 2003 the Circuit Court of Clay County, Missouri (the "Court") certified the following Class of persons who obtained a second mortgage loan from Preferred Credit (the "Class"):

All individuals who, on or after June 27, 1994:

- A. Obtained a "Second Mortgage Loan" loan from Preferred Credit Corporation (f/k/a T.A.R. Preferred Mortgage Corporation); and
- B. Who paid the following, or who financed the payment of the following as a part of the principal loan balance, at or before the closing:
  - 1. An origination fee exceeding 2% of the principal loan amount for loans having a loan date before August 28, 1998; or
  - 2. An origination fee exceeding 5% of the principal loan amount for loans having a loan date on or after August 28, 1998; or
  - 3. Any other fees or costs paid or financed as a part of the principal loan balance including, without limitation, the following fees and costs:
    - BROKER FEES
    - DOCUMENT PREPARATION FEES
    - LOAN (OR OTHER) PROCESSING FEES
    - UNDERWRITING FEES

- SUB-ESCROW FEES
- APPLICATION FEES
- REVIEW/APPRAISAL FEES
- CREDIT COURIER/UPS FEES
- DOCUMENT SIGNING FEES
- PROCESSING/ADMINISTRATION FEES

The prohibited fees and costs do not include the following:

- Fees and charges paid for perfecting, releasing, or satisfying a security interest related to the second mortgage loan
- Taxes
- Fees or premiums for title examination, title insurance, or similar purposes including survey
- Fees for preparation of a deed, settlement statement, or other documents
- Fees for notarizing deeds and other documents
- Appraisal fees
- Fees for credit reports
- Charges for insurance (i) protecting the lender against the borrower's default or other credit loss (ii) against loss of or damage to the property, where no such coverage then existed or (h) providing life, accident, health or involuntary unemployment coverage.

Definitions: For purposes of the Class:

A "Second Mortgage Loan" is "a loan secured in whole or in part by a lien upon any interest in Residential Real Estate created by a security instrument, including a mortgage, deed of trust, or other similar instrument or document, which provides for interest to be calculated at the rate allowed by the provisions of section 408.232, which Residential Real Estate is subject to one or more prior mortgage loans."

"Residential Real Estate" is "any real estate used or intended to be used as a residence by not more than four families, and which is situated within the state of Missouri."

#### **THE CLASS REPRESENTATIVES**

As part of its certification order, the Court designated the Plaintiffs in this lawsuit to act as Representatives for the Class. The Plaintiff Representatives are Michael Gilmor of Olathe Kansas, Ms. Shellie Gilmor of Liberty, Missouri, Michael and Lois Harris of Kansas City,

Missouri, Mr. Leo Parvin, Jr. of Independence, Missouri, and Ted and Raye Ann Varns of Atlanta, Missouri.

### **CLASS COUNSEL**

The Court has appointed the lawyers representing the Plaintiffs in this lawsuit to be Counsel for the Class. Class Counsel are: J. Michael Vaughan, Kip D. Richards and David M. Skeens of the law firm Walters Bender Strohbehn & Vaughan, P.C., P.O. Box 26188, 2500 City Center Square, Kansas City, Missouri 64196, 1.800.330.2581; and Eric Calhoun of the law firm Lawson, Fields, McCue, Lee & Campbell, P.C., 14135 Midway, Ste. 250, Addison, Texas 75001.

### **WHAT RELIEF DO THE PLAINTIFFS SEEK?**

The Plaintiffs allege that Preferred Credit violated the Missouri Second Mortgage Loans Act by "charging, contracting for and/or receiving" excessive "loan origination" fees and/or certain other closing costs from the Plaintiffs and the members of the Class in violation of R.S. Mo. § 408.233. The Plaintiffs allege that Preferred Credit and the Defendants are liable for these violations of Missouri law. The relief available to the Plaintiffs and the Class if this lawsuit is successful may include the following:

- A refund of the excessive loan origination fees and any unauthorized closing costs charged for the loans.
- A refund of all of the interest ever paid on the loans.
- A forfeiture of any future interest not yet due on any loans that have not been paid off.
- Punitive damages and reasonable attorneys' fees under R.S. Mo. § 408.562.

### **WHAT IF I ALREADY PAID OFF MY LOAN?**

It does not matter whether you have already paid off your loan from Preferred Credit. Even if you refinanced or paid your loan, you are still a member of the Class and may be entitled to relief.

### **DOES THIS NOTICE MEAN I CAN STOP PAYING MY LOAN?**

No. This Notice is simply a "notice" to tell you about this Class Action lawsuit. It does not relieve you of any obligation that you may have to make payments on any loan that you received from Preferred Credit.

## WHAT IF PREFERRED CREDIT SOLD MY LOAN?

It does not matter. You will still be a member of the Class and may be entitled to relief even if Preferred Credit sold your loan. In fact, Preferred Credit sold and assigned most if not all of the second mortgage loans it made. Businesses like Advanta Mortgage Corporation USA, Wendover Financial Services Corporation, U.S. Bank National Association, Litton Loan Servicing, Countrywide Home Loans, Empire Funding Corporation and Ocwen Federal Bank were hired to administer and "service" the loans (that is, to send out the bills, collect the payments, and send out the annual mortgage interest [IRS Form 1098] statements at the first of the year) on behalf of the entities that purchased the loans.

## WHAT DO I NEED TO DO?

You have a choice. You can remain a member of the Class *or* you have the right to exclude yourself from the Class. You also have the option of hiring your own attorney and intervening directly in this lawsuit. Each of these choices has consequences, which you should understand before making your decision

### A. If you want to remain a member of the Class

If you wish to remain a member of the Class and have your rights adjudicated in this case, you need not do anything at this time. If you remain a member of the Class:

1. Class Counsel and the Class Representatives will represent your interests in this case. You will not be charged for this representation. Class Counsel have agreed to handle the case on a "contingent" basis and to advance all costs and expenses on behalf of the Plaintiffs and the Class. (See below, "What will it Cost me to Stay in the Class?")
2. You may advise the Court at any time you believe your interests are not being fairly and adequately represented by either the Class Representatives or Class Counsel.
3. As a member of the Class, you will be entitled to share in the monetary recovery obtained by the Class, if any, and will also receive the benefit of any other relief that may be ordered by the Court. The relief sought for each member of the Class includes:
  - A refund of any excessive origination fees and any unauthorized closing costs.
  - A refund of all of the interest paid to date.
  - A forfeiture of any obligations to pay future interest.
  - Punitive damages and reasonable attorneys' fees.

4. Your ability to recover from Preferred Credit and the other Defendants will depend upon the results of this lawsuit. As member of the Class, you will be bound by whatever happens in this case either favorable or unfavorable.
5. In order to participate in any recovery, you may be required to verify the amount of the fees, costs and interest that you were charged and paid. (You should therefore preserve any papers related to your loan, including the Settlement Statement (Form HUD-1) and any IRS Form 1098's.) If a Defendant has a claim against you, it may assert that claim as a counterclaim if you remain a member of the Class. A Defendant may also assert any claim that it may have against you if you opt out of the Class.
6. You will be entitled to notice of, and an opportunity to be heard respecting any proposed settlement of the Class claim.

**B. If you want to exclude yourself from the Class**

If you do not want to be a member of the Class, you may exclude yourself or "opt out" of the Class by signing and returning the attached Exclusion Request Form to Class Counsel at the following address:

Walters Bender Strohbehn & Vaughan, P.C.,  
Re: *Gilmor v. Preferred Credit*  
P.O. Box 26188  
2500 City Center Square  
Kansas City, Missouri 64196

**To be effective, the Exclusion Request Form must be completed, signed and postmarked by March 31, 2003.**

By making this election to be excluded: (1) you will not share in any recovery that might be paid to the members of the Class as a result of a trial or settlement; (2) you will not be bound by any determinations made in this lawsuit, whether favorable or unfavorable; (3) you will not be entitled to any further notice concerning these proceedings; and (4) you must present any claims you have against the Defendants by filing your own lawsuit, or you may seek to intervene in this lawsuit.

**C. If you want to Intervene**

You also have the right to file an appearance and intervene (participate as an additional plaintiff) in this lawsuit through your own attorney; but it is not necessary to intervene in this lawsuit in order to receive your share of any judgment, if liability is found by the Court, or settlement as a member of the Class. If you *do* want to intervene through your own attorney, you must file your motion to intervene on or before March 31, 2003.

### WHAT WILL IT COST ME TO STAY IN THE CLASS?

If you do not elect to exclude yourself from the Class (or to intervene in the lawsuit through your own attorney), you will be represented by Class Counsel (whose names are given above). You will not be charged for this representation; and there is no out-of-pocket cost to any member of the Class regardless of the outcome. Class Counsel have agreed to handle the case on a "contingent" basis and to advance all costs and expenses on behalf of the Plaintiffs and the Class.

If this lawsuit is successful, Class Counsel will ask the Court to award them reasonable attorneys' fees for their work. The Court may order the Defendants to pay such fees directly, or the Court may award such fees from a portion of any amounts recovered for the Plaintiffs and the Class. In either instance, the Court will determine whether fees will be awarded and, if so, what the amount of the fees will be.

### OTHER MATTERS

Further proceedings in this case will be conducted before the Circuit Court in Liberty, Missouri. These proceedings may include the determination of motions for summary judgment, pretrial proceedings, trial, approval of any proposed settlement, and other aspects of this litigation.

**Please do not call the Judge, Clerk or Circuit Court about this Notice or lawsuit. They will not be able to give you advice or answer your questions.**

If you have any questions or would like more information, you should contact your own attorney or call: Mike Vaughan, Kip Richards and/or David Skeens of the law firm Walters Bender Strohbehn & Vaughan, P.C., P.O. Box 26188, 2500 City Center Square, Kansas City, MO 64196, 1.800.330.2581.

You may, of course, consult with your own attorney. The pleadings and other records in this lawsuit may be reviewed and copied in the office of the Clerk of the Circuit Court of Clay County, Missouri, 11 South Water, Liberty, MO 64068.

If you are (or were) a Debtor in a Chapter 13 or Chapter 7 Bankruptcy proceeding pending after you obtained your loan, you should send a copy of this Notice to your bankruptcy attorney.

If your address has changed, or changes in the future, you should send your new address to Counsel for the Class (identified above).

Dated: February 20, 2003

  
David W. Russell, Circuit Judge

*Kip Richards to give copies to all parties.*